

No. 1356*

**United Nations
and
International Criminal Court**

Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Office of Internal Oversight Services and the International Criminal Court (with memorandum of understanding, 16 July 2010 and 21 July 2010). New York, 25 February 2011 and 18 March 2011

Entry into force: *18 March 2011 by signature, with retroactive effect from 19 July 2010, in accordance with article 12*

Authentic text: *English*

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**Organisation des Nations Unies
et
Cour pénale internationale**

Mémorandum d'accord entre l'Organisation des Nations Unies et la Cour pénale internationale relatif à la coopération entre le Bureau des services de contrôle interne des Nations Unies et la Cour pénale internationale (avec mémorandum d'entente, 16 juillet 2010 et 21 juillet 2010). New York, 25 février 2011 et 18 mars 2011

Entrée en vigueur : *18 mars 2011 par signature et avec effet rétroactif à compter du 19 juillet 2010, conformément à l'article 12*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**Memorandum of Understanding
Between the United Nations and the International Criminal Court
Concerning Cooperation between the United Nations Office of Internal Oversight
Services and the International Criminal Court**

Whereas the United Nations and the International Criminal Court (the "Court") have concluded a Relationship Agreement between the United Nations and the International Criminal Court (the "Relationship Agreement"), which entered into force on 4 October 2004;

Whereas the United Nations General Assembly, in its resolution 58/318 of 13 September 2004, decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the Court that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full to the Organization;

Whereas the United Nations Office of Internal Oversight Services ("OIOS") was established pursuant to the United Nations General Assembly resolution 48/218B of 12 August 1994 as an independent office under the authority of the Secretary-General of the United Nations;

Whereas United Nations General Assembly resolution 48/218B of 12 August 1994 provides, inter alia, that OIOS will have the mandate to assist the Secretary General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the United Nations;

Whereas the Assembly of States Parties to the Rome Statute ("Assembly of States Parties") adopted the resolution ICC-ASP/8/Res.1 of 26 November 2009 whereby it established an independent oversight mechanism ("IOM") with the view to conduct investigations on allegations of misconduct by staff and elected officials of the Court and to ensure an effective and meaningful oversight thereof;

Whereas pursuant to the Assembly of States Parties resolution ICC-ASP/8/Res.1 of 26 November 2009, the Registrar of the Court is tasked with entering into a memorandum of understanding ("MOU") with the OIOS to provide support services on a cost recovery basis for the operationalization of the IOM;

Whereas in Article 10 of the Relationship Agreement, the United Nations agrees that, upon the request of the Court, it shall, subject to availability, provide on a reimbursable basis for the purposes of the Court such facilities and services as may be required and *whereas* it is further stipulated in that Article that the terms and conditions on which any such facilities or services may be provided by the United Nations shall, as appropriate, be the subject of supplementary arrangements;

Whereas in Article 8, paragraph 2 (b), of the Relationship Agreement, the United Nations and the Court agree to cooperate in the temporary interchange of personnel, where appropriate, making due provisions for the retention of seniority and pension rights;

Whereas in Article 8, paragraph 2 (c), of the Relationship Agreement, the United Nations and the Court agree to strive for the maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services;

Whereas the United Nations and the Court have concluded a Memorandum of Understanding on Reimbursable Loan of Staff on 21 July 2010;

Whereas the United Nations and the Court wish to conclude arrangements of the kind foreseen in Articles 8 and 10 of the Relationship Agreement;

Now, therefore, the United Nations, acting through the OIOS and the Court, acting through its Registry (the "Parties") have agreed as follows:

CHAPTER I: GENERAL PROVISIONS

Article 1 Purpose

This Memorandum of Understanding (the "MOU") sets out the modalities of cooperation between the United Nations and the Court in connection with the setting up and operationalization of the oversight mechanism of the Court.

Article 2 Cooperation

1. OIOS undertakes to cooperate with the Court in accordance with the specific modalities set out in this MOU.
2. This MOU may be supplemented at any time by means of written agreement between the Parties or their designated representatives setting out additional modalities of cooperation between OIOS and the Court.
3. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be understood to derogate from any of its terms. In the case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.

Article 3 Basic principles

It is understood that OIOS shall afford the assistance and support provided for in this MOU to the extent feasible within its capabilities and without prejudice to its ability to discharge its other mandated tasks.

Article 4
Reimbursement

1. All services, facilities, cooperation, assistance and other support provided to the Court by the United Nations pursuant to this MOU shall be provided on a fully reimbursable basis.
2. The Court shall reimburse the United Nations or OIOS in full for and in respect of all clearly identifiable direct costs that the United Nations or OIOS may incur as a result of or in connection with OIOS's providing services, facilities, cooperation, assistance or support pursuant to this MOU.
3. The Court shall not be required to reimburse the United Nations or OIOS for or in respect of:
 - (a) costs that the United Nations or OIOS would have incurred regardless of whether or not services, facilities, cooperation, assistance or support were provided to the Court pursuant to this MOU;
 - (b) any portion of the common costs of the United Nations or of OIOS;
 - (c) depreciation in the value of United Nations or OIOS owned equipment that might be used by the United Nations or OIOS in the course of providing assistance, facilities, cooperation or support pursuant to this MOU.

CHAPTER II: SERVICES, FACILITIES AND SUPPORT

Article 5
Administrative and logistical services

1. At the request of the Court, OIOS is prepared to provide administrative and logistical services to the Court for the purposes of assisting the Court in setting up and operationalizing its own oversight mechanism, including:
 - (a) Intake assessment
 - (b) Planning support
 - (c) Assistance with records review
 - (d) Interview planning and preparation
 - (e) Guidance on IT forensic analysis and other forensic tools
 - (f) Support for the collection and management of evidence
 - (g) Advice on and review of investigation support
 - (h) Access to OIOS's Investigation Learning Programme.

2. The Court shall make requests for such services in writing. In making such requests, the Court shall specify the nature of the administrative or logistical services sought, when they are needed and for how long. OIOS shall inform the Court in writing whether or not it accedes to a request as soon as possible and in any event within 10 working days of its receipt. In the event that it accedes to the request, OIOS shall simultaneously inform the Court in writing of the date on which it is able to commence the provision of the services concerned and of their estimated cost.

Personnel arrangements

Article 6

1. With a view to assisting the Court in the setting up and operationalization of the IOM, and pursuant to Articles 8 and 10 of the Relationship Agreement, OIOS agrees to make available to the Court, on a reimbursable basis, a staff member of OIOS at the P5 level for the period of one year.
2. The terms and conditions of the arrangement referred to in paragraph 1 above are set out in the Memorandum of Understanding between the United Nations and the International Criminal Court on Reimbursable Loan of Staff concluded on 21 July 2010 (the "July 2010 MOU"), a copy of which is attached as Annex I hereto.
3. OIOS and the Court may decide at any time, by means of a written agreement, to amend the conditions of the arrangement referred to in paragraph 1 above, including those set out in the July 2010 MOU, of the staff member of OIOS to the Court.
4. OIOS and the Court may decide at any time, by means of a written agreement, to enter into arrangements for additional staff to be made available to the Court on such terms and conditions as the Parties may agree.

Article 7

1. During his/her tenure at the IOM, the loaned staff member shall provide any such service as may be required for the setting up and operationalization of the IOM.
2. If required, the loaned staff member shall provide full investigative services to IOM. The Court shall enter into a separate agreement with OIOS, pursuant to Article 10 of the Relationship Agreement, should the IOM require additional assistance from OIOS for the purposes of the conduct of such investigations.

CHAPTER III: IMPLEMENTATION

Article 8
Payments

1. OIOS shall submit invoices to the Court for the provision of services, facilities, cooperation, assistance and support under this MOU on a regular basis.
2. The Court shall make payment against such invoices within 30 (thirty) days of the date printed on them.
3. Payment shall be made in United States Dollars, either in cash or by means of bank transfer made payable to the United Nations bank account specified on the invoice concerned.

Article 9
Communications

1. OIOS and the Court, as the case may be, shall each designate official contact persons responsible:
 - (a) for making, receiving and responding to requests under this MOU;
 - (b) for submitting and receiving invoices and for making and receiving payments under Article 7 of this MOU.
2. All requests, notices and other communications provided for or contemplated in this MOU shall be made in writing, either in English or in French.
3. All requests and communications provided for or contemplated in this MOU shall be treated as confidential, unless the Party making the request or communication specifies otherwise in writing. The United Nations, OIOS and the Court shall restrict the dissemination and availability of such requests and communications and the information that they contain within their respective organizations or offices on a strictly "need to know" basis. They shall also take the necessary steps to ensure that those handling such requests and communications are aware of the obligation strictly to respect their confidentiality.

Article 10
Consultation

1. The Parties shall keep the application and implementation of this MOU under close review and shall regularly and closely consult with each other for that purpose.
2. The Parties shall consult with each other at the request of either Party on any difficulties, problems or matters of concern that may arise in the course of the application and implementation of this MOU.

3. Any differences between the Parties arising out of or in connection with the implementation of this MOU shall be settled in consultation between the Registrar and the Under-Secretary-General for Internal Oversight Services or the Director for Investigations. If such differences are not settled by such consultations, they shall be referred to the President of the Court and to the Secretary-General of the United Nations for resolution.



Article 11
Indemnity

Each Party shall be responsible for resolving any claims or disputes brought against it by its officials, agents, servants or employees or a third party based on, arising out of, related to, or in connection with the implementation of this MOU by that Party, unless the claim or dispute results from the gross negligence or willful misconduct of the other Party or of the other Party's officials, agents, servants or employees.

CHAPTER VI: FINAL PROVISION

Article 12

1. This MOU shall enter into force on the date of its signature by the Parties.
2. Notwithstanding the date of signature, this MOU shall be deemed to have entered into force on 19 July 2010. It will remain in force for a period of one year from that date and shall thus end on 18 July 2011 unless otherwise renewed by written agreement of both Parties.
3. This MOU may be modified or amended by written agreement between the Parties.

For and on behalf of the United Nations	For and on behalf of the Court
Date: 25 Feb 2011  Carman L. Lapointe Under-Secretary-General for Internal Oversight Services	Date: 18 March 2011  Silvana Arbia Registrar

Memorandum of Understanding between the United Nations and the International Criminal Court on Reimbursable Loan of Staff

The present Memorandum of Understanding between the United Nations and the International Criminal Court, hereinafter referred to as the "Memorandum" sets out the terms and conditions governing the Reimbursable Loan of Ms. Beverley I. Mulley, hereinafter also referred to as the "Staff Member", from the United Nations Office of Internal Oversight Services, hereinafter referred to as "OIOS", to the International Criminal Court, hereinafter referred to as "ICC", within the framework of the Memorandum of Understanding between the United Nations and the International Criminal Court concerning Cooperation between the United Nations Office of Internal Oversight Services and the International Criminal Court.

All three parties concerned, Ms. Mulley, United Nations and ICC are signatories of the present Memorandum and confirm that they will fulfil the terms and conditions of the provisions contained therein, as stipulated hereafter.

Status of the Staff Member subject to Reimbursable Loan

Current title:	Investigator
Current category/grade and step:	P-4 step IV
Current duty station:	New York, U.S.A.
Title while on Reimbursable Loan:	Temporary Head of the Independent Oversight Mechanism
Category and grade while on Reimbursable Loan:	P-5 step I
Duty station while on Reimbursable Loan:	The Hague, The Netherlands

The Staff Member has, at the date of the execution of this Memorandum, no dependents.

General Terms and Conditions

1. Pursuant to Article 6 of the Memorandum of Understanding between the United Nations and the International Criminal Court concerning Cooperation between the United Nations Office of Internal Oversight Services and the International Criminal Court, Ms. Beverley I. Mulley, a staff member of OIOS at the P-4 level holding a fixed-term appointment shall:

- (a) be made available to the ICC on a reimbursable loan arrangement (the "Arrangement") and, therefore, all costs incurred by the UN as a result of the present arrangement shall be reimbursed by the ICC, unless specifically excluded herein;
- (b) continue to be a UN staff member subject to the UN Staff Regulations and Rules;
- (c) retain his/her contractual rights with the UN;
- (d) continue to be paid on the UN's payroll;
- (e) receive all benefits and allowances to which s/he is entitled under the UN Staff Regulations and Rules; and
- (f) be under the administrative supervision of, but not under contractual relationship with, the ICC.

2. This Arrangement shall be for a period of one year commencing on 19th of July 2010 and expiring on 18 July 2011 without prior notice. The Arrangement shall not be deemed to carry any

expectation of or right to an extension unless agreed to by the OIOS, the ICC and the Staff Member.

Extension or Early Termination

3. The UN or ICC may, for financial, administrative, or other reasons, terminate this Arrangement prior to its expiration date. In case the ICC or OIOS wishes to effect such early termination, the ICC or OIOS, as the case may be, will provide the OIOS or the ICC, as the case may be, with a three-month written notice to this effect.

4. The Staff Member may terminate the loan arrangement prior to the scheduled end date by providing a three-month written notice to OIOS and the ICC. Notice may be shorter if the Staff Member, the ICC and OIOS have agreed thereto.

5. OIOS agrees to grant the Staff Member return rights to his/her post in OIOS upon completion of the loan or upon termination prior to the expiration of the Arrangement, provided that such early termination has been effected in accordance with paragraph 4 above.

6. In case of alleged misconduct or unsatisfactory conduct on the part of the Staff Member, the ICC may terminate the Arrangement with immediate effect upon written notice to OIOS.

Benefit and entitlements

7. Service in the ICC shall be counted for all purposes, including credit towards within-grade increments, as service in the UN.

Salary and Allowances

8. The UN shall continue to pay the Staff Member's salary and allowances, including any post adjustment in force at the new duty station.

Pension Fund

9. The Staff Member shall continue to participate in the UN Joint Staff Pension Fund (UNJSPF). The UN shall continue to pay into the Pension Fund in accordance with the UN Staff Regulations and Rules. This Arrangement shall not affect any rights the Staff Member may have acquired under the UNJSPF.

Service-incurred coverage

10. (a) Any claim for compensation for service-incurred illness, injury or death shall be made to, and dealt with by, the organization to which service it is attributable, under its applicable regulation and rules.
(b) Any compensation based on salary shall be calculated with reference to the last grade and step held by the Staff Member at the time of death or incapacity giving rise to the compensation.

Health and Group Life Insurance

11. The Staff Member will be entitled to continue participation in the health or group life insurance arrangement of the UN, as appropriate.

Annual Leave

12. (a) The Staff Member will carry with him/her to the ICC his/her accrued annual leave credit.
- (b) If so requested by the Staff Member, ICC will enable the Staff Member to take, before his/her return to OIOS, all annual leave that s/he accumulated during his/her service with the ICC.
- (c) When the Staff Member returns to OIOS, s/he will carry forward his/her accrued leave credit from the ICC to OIOS.

Relocation and Travel

13. The Staff Member's entitlement to travel costs in connection with the loan arrangement will be governed by the regulations and rules of the UN. The cost of travel between New York and The Hague, and any other related travel costs, shall be borne by the ICC.
14. The Staff Member's entitlement to assignment grant in connection with the loan arrangement shall be governed by the regulations and rules of the UN. The costs of the assignment grant upon the Staff Member's move to the ICC in The Hague, as applicable, shall be borne by ICC. The cost of any assignment grant upon the Staff Member's return to OIOS New York, as applicable, will be borne by ICC.
15. All costs related to official travel undertaken by the Staff Member during the period of loan to ICC shall be governed by the ICC regulations and rules and shall be borne by the ICC.
16. In cases of early termination of the loan arrangement, the relocation entitlements of the Staff Member shall be governed by the regulations and rules of, and borne by, the ICC.

Other

17. Performance assessments and evaluations of the Staff Member's work during the period of the loan shall be prepared by the ICC and provided to OIOS.
18. The Regulations and Rules of the UN shall apply in the event of alleged misconduct or unsatisfactory conduct.
19. Appeals against administrative decisions taken during the period of loan will be submitted to the appropriate UN appeals body and be dealt with under the UN regulations and rules.
20. No part of this Memorandum shall be taken or interpreted against the UN regulations and rules.
21. All liabilities, including, but not limited to, financial liabilities, shall be borne by the ICC except where expressly stated otherwise in this memorandum.

Confidentiality

22. The United Nations shall ensure that the Staff Member will exercise the utmost discretion in regard to all matters of official business of the ICC; shall not communicate to any

person, government or any entity any information known by reason of the implementation of this loan which has not been made public, except in the course of the Staff Member's duties or by authorization of the appropriate authorities of the ICC; and shall not at any time use such information to private advantage and shall not at any time publish anything based thereon except with the written approval of the appropriate authorities of the ICC. These obligations do not cease upon termination of this loan.

Name of Staff member: Beverly I. Mulley (UN Index No: 246327)

Signature and Date: Beverly Mulley 16 JULY 2010

For the United Nations: Dominique Gagnon, Chief,
Section D, HR Services, LDSD/Office of Human
Resources Management

Signature and Date: D. Gagnon 16/07/10

For International Criminal Court: Kristiane Golze, Chief
Human Resources Section

Signature and Date: Kristiane Golze (O.I.C.) 21/07/10